

HENRY BEAMISH.

[To accompany bill H. R. No. 93.]

DECEMBER 22, 1837.

Mr. SMITH, from the Committee on Commerce, made the following

REPORT:

The Committee on Commerce, to which was referred the petition of Henry Beamish, report a bill for his relief. The subjoined report in his case was made to a previous Congress, and is adopted as a part of the present report.

MAY 10, 1836.

The Committee on Commerce, to which was referred the petition of Henry Beamish, having had the same under consideration, make the following report:

The facts in this case are concisely stated in the petition of Mr. Beamish, and the committee think it unnecessary to repeat the facts stated. They append it, and also the evidence, together with the communications that heretofore passed between the British minister resident at Washington, and the Secretary of State, and also a letter from the Secretary of the Treasury, in relation thereto.

The committee report a bill to refund to the petitioner the amount of the proceeds of the sale of his property, which amounts to \$201 92.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of Henry Beamish, of St. Andrew's, in the Province of New Brunswick, merchant, a British subject,

HUMBLY SHEWETH,

That on the 8th day of October, A. D. 1827, he purchased of one William Prescott, an American citizen, ninety-nine barrels of flour, then in store at Eastport, in the United States; that on the 26th day of October, 1827, he sent an open unregistered boat, British owned, in ballast, to said Eastport, which took on board forty-four barrels of said flour, of the value of two hundred and twenty dollars, for the purpose of boating the same to St. Andrew's, according to the then usual and permitted intercourse between the two countries; that when the flour was so laden on board the said boat, she was struck adrift, (John B. Marge, the owner and master thereof, being on board,) and was driven, by the violence of the wind, into the bay of Passamaquoddy, where she continued to drift about until the afternoon of the 27th October, when the said Marge succeeded in making a harbor at Lubec, another port in the United States, when and where the Thomas Allen, print.

said boat and flour were immediately seized by the officers of the United States customs, for a breach of the revenue or navigation laws of that Government.

That at the December term of the district court next after said accident and seizure, said boat and flour were libelled, and that your petitioner employed counsel to defend the suit ; but that your petitioner, being so remote from the place of trial, and not having friends in the United States, whom he could request to become his sureties in the usual bond required of claimants in that court, was precluded from filing his claim within the time prescribed by the court, and from presenting his petition to the Secretary of the Treasury, agreeably to the provisions of an act of Congress of 3d March, 1797 ; and that, consequently, said flour was decreed forfeited to the United States, and has been duly sold, and the proceeds thereof distributed according to law.

And your petitioner, referring your honorable body to the annexed affidavits of John B. Marge, the owner and master of said boat, and of Oliver N. Allen, the seizing officer, and to the extracts from the record of the district court, duly certified by John Mussey, Esq., clerk thereof, humbly prays your honorable body to grant him such relief in the premises, as you, under the peculiar circumstances of the case, shall consider him entitled to receive.

HENRY BEAMISH.

ST. ANDREW'S, NEW BRUNSWICK, *January 2, 1832.*

John B. Marge, of St. Andrew's, in the Province of New Brunswick, boatman, maketh oath and saith : That having been employed by Mr. Henry Beamish, of St. Andrew's aforesaid, merchant, to carry a quantity of flour from Eastport, in the United States, to St. Andrew's aforesaid, he, this deponent, proceeded to Eastport, on the 26th day of October, in the year of our Lord one thousand eight hundred and twenty-seven, received and shipped on board of his said boat forty-four barrels of flour, upon account of and for the said Henry Beamish, to be conveyed to St. Andrew's aforesaid ; and he, this deponent, further saith, that before he could get his boat out of the American waters, he was obliged, through stress of weather, to return to Eastport with the said flour ; and afterwards, about one o'clock, on the 27th day of the said month, made another attempt to get under way, but the weather continued too boisterous to allow this deponent to proceed on his passage ; that he then made his boat fast to a wharf in Eastport, and remained on board himself until about daylight, when the boat went adrift ; and that he was unable, by reason of the violence of the wind, to proceed on his voyage, but drifted about in the bay of Passamaquoddy, until about five o'clock, on the 27th day of October aforesaid, when this deponent succeeded in getting the said boat into Lubec, near Eastport, much chilled and fatigued ; then this deponent's boat was soon after seized by Mr. Allen, of the customs, at Lubec, although he, this deponent, communicated to him the circumstances which led to his arrival at Lubec ; and the said Mr. Allen, after taking the flour, offered to return the said boat to this deponent on condition that he, this deponent, would give him, the said Mr. Allen, a written promise to return the said boat when it should be demanded, or he, this deponent, should pay the sum of five dollars ; which request this deponent complied with, and received his boat back : and this deponent further saith, that the boat in which the said flour was shipped is a small open boat not registered ; and he

further saith, that he is a British subject, residing in St. Andrew's; and that whilst he was so employed by the said Henry Beamish, he thought, and verily believed, that he was acting legally, and that he had no intention whatever to defraud the revenue, during any part of the transaction.

JOHN B. MARGE.

Sworn this 2d January, 1832, before Peter Stubbs, one of his Majesty's justices of the peace, in and for the county of Charlotte.

To the honorable Ashur Ware, Judge of the District Court of the United States of America for the Maine district.

Be it remembered, That Ether Shepley, attorney of the United States for the Maine district, in his proper person, comes before the said judge, and, in the name and on behalf of the United States, libels, propounds, and gives the said judge to understand and be informed, that on the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and twenty-seven, at Lubec, within the said Maine district, and on waters navigable from the sea by vessels of ten and more tons burden, a certain vessel, or open boat, called the _____, of the burden of about tons, whereof _____ was master, her tackle, apparel, and furniture, and her lading found on board, consisting of forty-four barrels of flour, were seized by Stephen Thacher, esquire, collector of the district of Passamaquoddy, within the said Maine district, and the same are now held and detained in custody by the said collector for trial and adjudication: whereupon the said attorney, in behalf of said States, alleges and says, that prior to and at the time of the seizure aforesaid, to wit, on the seventh day of October, in the year of our Lord one thousand eight hundred and twenty-seven, the said open boat and lading were owned by a subject or subjects of his Britannic Majesty, to the said attorney unknown, and, when seized as aforesaid, were coming and arriving by sea from some port or place within the Province of New Brunswick, to wit: the port of _____, and at the time of said seizure had entered the said port of Lubec, contrary to the form of the statute in such case made and provided; whereby the vessel aforesaid, her tackle, apparel, and furniture, and her cargo found on board, became forfeited to said States.

And the said attorney further propounds and alleges, that on the twenty-seventh day of October aforesaid, at Lubec, in said district, the aforesaid vessel or boat, called an open boat, was a vessel owned wholly or in part by a subject or subjects of his Britannic Majesty, and came and arrived by sea, from some port or place in the Province of New Brunswick, to the attorney unknown, within the port of Lubec aforesaid, contrary to the form of the statute in such case made and provided; whereby, and by force of said statute, the said vessel, her tackle, apparel, and furniture, and her cargo on board, became forfeited to said States.

Wherefore the said attorney prays the advisement of the said judge in the premises, and that monition may be awarded, and due process and proceedings be had; and that said vessel, her tackle, apparel, and furniture, and her cargo on board, may be decreed forfeit to said States, and be disposed of according to law.

ETHER SHEPLEY, *Att'y of the U. S.*

for the said Maine District.

A true copy from the original, on file in the district clerk's office for the district of Maine.

Attest :

JOHN MUSSEY, *Clerk.*

MAINE DISTRICT, ss.

The United States, lib.

vs.

An open boat and lading.

District Court, December term, A. D. 1837.

On proclamation and default, decreed forfeit.

LONGFELLOW : If bond and claim be filed by the 17th January next, default to be taken off, and the cause carried forward.

Vend. expo. issued January 29, 1828.

A true extract from the docket of the district court.

Attest :

JOHN MUSSEY, *Clerk.*

Copy of the deputy marshal's return on the warrant of sale issued in the case of United States, lib., vs. An open boat and lading, the twenty-ninth day of January, A. D. eighteen hundred and twenty-eight, viz :

DISTRICT OF MAINE, ss.

Pursuant to this warrant, after having advertised the time and place of sale fifteen days, in the Eastport Sentinel, printed at Eastport, I exposed and sold at public auction, at Lubec, on Tuesday, the 26th day of February instant, at two o'clock, P. M., at the custom-house store in Lubec, the within-named articles, to the undernamed persons, they being the highest bidders therefor, viz :

Boat to O. N. Allen, for	-	-	-	-	\$5 00
44 barrels of flour to O. N. Allen, at \$5 20				-	228 80
					<u>\$233 80</u>

Deduct charges :

Storage	-	-	-	-	\$8 04
Marshal: Advertising \$5, services \$2				\$7 00	
Travel, \$11, commission \$5 84				16 84	
				<u>23 84</u>	
					<u>31 88</u>

Nett sales being	-	-	-	-	<u>\$201 92</u>
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G. S. SMITH, *Deputy Marshal.*

LUBEC, 27th February, 1828.

A true copy from the original return.

Attest :

JOHN MUSSEY, *Clerk.*

STATE OF MAINE, }
Washington, } ss.

I, Oliver N. Allen, of Lubec, in the county of Washington and State of Maine, merchant, on oath, declare and say : That I was an inspector of

the revenue in the district of Passamaquoddy on the 27th day of October, A. D. 1828 ; that, in the afternoon of that day, I seized an open British boat, and forty-four barrels of flour laden on board thereof, which I found in charge of a man whose name I understood was Marge, belonging to St. Andrew's. He said he had laden the flour on board said boat at Eastport in said district, and went adrift, and had come into Lubec for a harbor ; and, if I recollect aright, he said the flour belonged to Henry Beamish, of St. Andrew's.

Considering the exportation of flour from the United States to St. Andrew's, (to which place said flour was shipped,) in an open British boat, an infringement of the navigation laws of the United States, it was seized, under the direction of the collector of the district of Passamaquoddy, and was afterwards duly libelled, condemned, and sold, and the proceeds thereof duly distributed.

OLIVER N. ALLEN.

September 4, 1831.—Sworn and subscribed before me,

FREDERICK HOBBS,

Justice of the Peace.

The United States against an open boat and cargo.

Boat to O. N. Allen	-	-	-	-	-	\$ 5 00
44 barrels of flour to do. at \$5 20	-	-	-	-	-	228 80

233 80

Deduct charges :

Storage	-	-	-	-	\$8 04
Marshal, advertising	-	-	-	-	5 00
service	-	-	-	-	2 00
travel	-	-	-	-	11 00
commission	-	-	-	-	5 84

31 88

\$201 92

To costs charged, viz :

Marshal's fees	-	\$31 88
Clerk's fees,	-	44 07
Nett proceeds	-	157 85

\$233 80

By gross amount of sales \$233 80

\$233 80

Collector's proportion	-	\$29 23
Surveyor's do.	-	29 22
Informer's do.	-	58 45

United States do. carried to their credit in account current 4th quarter, 1827	40 95
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\$157 85

By nett proceeds - \$157 85

\$157 85

TREASURY DEPARTMENT,

Register's Office, February 3, 1832.

I hereby certify that the foregoing is a true extract taken from the accounts of the collector of Passamaquoddy, and that the sum of \$40 95 is carried to the credit of the United States in the fourth quarter of 1828.

T. L. SMITH, *Register.*

To the Right Honorable Charles R. Vaughan, his Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America :

The petition of Henry Beamish, of St. Andrew's, in the Province of New Brunswick, merchant,

HUMBLY SHEWETH :

That on the 8th October last past, he purchased from one William Prescott, an American citizen, ninety-nine barrels of flour, to be delivered to your petitioner at Eastport, in the United States.

That about a week after he purchased the said flour, he caused to be conveyed to Saint Andrew's aforesaid, in a small open boat not registered, twenty barrels of the same, which was duly entered at the custom-house there, and the duties thereon paid.

That your petitioner afterwards, on the 26th October last, employed one John B. Marge to convey a quantity of the said flour still remaining at Eastport, to St. Andrew's ; and that, on the 26th October aforesaid, there were shipped on board of the boat belonging to the said John B. Marge, forty-four barrels of the said flour, of the value of two hundred and twenty dollars, with the intention of conveying the same to St. Andrew's aforesaid, and to enter it at the custom-house there, and pay the duties thereon, in the same manner which he had done with the twenty barrels before mentioned.

That your petitioner has been informed by the said John B. Marge, that after several unsuccessful attempts to leave Eastport with the said boat, she went adrift with the said John B. Marge on board, and drifted about the bay of Passamaquoddy until the afternoon of the 27th October aforesaid, when he, the said John B. Marge, succeeded in getting the said boat into Lubec, in the United States, where the boat and flour were soon after seized by the officers of the customs of the United States, for an alleged breach of the navigation or revenue laws of that Government.

That your petitioner begs leave further to represent, that although the said boat was British built, yet it was not registered, nor had or exercised the privileges of a British vessel. That the said flour was taken on board of the said boat in the daytime, and in the usual course of business in this part of the country, and without any intention on the part of your petitioner to defraud the revenue of the United States, or to infringe any law regulating any trade or commercial intercourse between the two countries.

And your petitioner begs leave respectfully to refer your excellency to the enclosed affidavit of Mr. John B. Marge, the owner of the said boat, and to the accompanying memorial of the principal officers of his Majesty's customs at the port of St. Andrew's aforesaid, and also to the memorial signed by the principal merchants and shipowners resident in St. Andrew's.

Your petitioner, therefore, humbly prays that your excellency will be

pleased to take his case into your favorable consideration, and represent the same to the Government of the United States, and endeavor to have the said flour, or the value thereof, restored.

And, as in duty bound, will ever pray

HENRY BEAMISH.

ST. ANDREW'S, December 27, 1827.

To the Right Honorable Charles R. Vaughan, his Britannic Majesty's Envoy Extraordinary and Minister Plenipotentiary to the United States of America :

The memorial of the undersigned merchants and shipowners residing in St. Andrew's, in the Province of New Brunswick,

HUMBLY SHEWETH :

That your memorialists are personally acquainted with Mr. Henry Beamish, of St. Andrew's aforesaid, merchant, whose petition accompanies this memorial.

That they verily believe the said Henry Beamish acted with good faith in the transaction alluded to in his petition, and without any intention of defrauding the revenue of the United States, or of infringing any navigation law of that country.

That the mode adopted by the said Henry Beamish to convey the flour mentioned in his petition from Eastport, in the United States, to St. Andrew's, is the usual and ordinary mode of conveying flour between the said places.

That they are not aware of any law of the United States prohibiting that intercourse in open-boats not being registered, they not having, as we conceive, any national character.

That the case of the said Henry Beamish is one of peculiar hardship, and to him very injurious in its consequences ; and not only to him, but eventually to the merchants on each side of the lines.

Your memorialists therefore request that your excellency will be pleased to represent the circumstances of Mr. Beamish's case to the Government of the United States ; which application, we hope and trust, will have the desirable effect of preventing a repetition of such unpleasant occurrences.

And, as in duty bound, your petitioners shall ever pray.

James Rait & Co.

Peter Stubs.

John Hilson.

David Wyer.

Colin Campbell, com'n. merc't.

George P. McMash.

Thomas Wyer.

Richard Wilson.

Richard Hasluck & Co.

Alex. Thompson.

Peter Smith.

William Kerr.

Alex. Strachen, Jr.

ST. ANDREW'S, N. B. December 27, 1827.

H. M. CUSTOM-HOUSE, ST. ANDREW'S, N. B.

December 27, 1827.

MAY IT PLEASE YOUR EXCELLENCY : At the earnest request of Mr. Henry Beamish, a British merchant residing here, we respectfully beg leave to represent, that, after a careful perusal of the documents he is about to lay before your excellency, relative to the seizure of a quantity of flour

by certain officers of the United States revenue, we have no reason to believe that Mr. Beamish intended to commit any illegal act, or to violate, in any manner, either the laws of his Majesty's Government, or those of the United States; and so far as the circumstances of the case have come under our observation, the statement he submits is correct. A considerable portion of the trade between this place and the opposite shores of the United States, is carried on in open boats, both British and American, not requiring registers. The relations of amity are thus, in a great measure, preserved between the inhabitants of the two countries on this frontier; and we can only lament that such an act as Mr. Beamish complains of should interrupt the harmony which at present exists.

COLIN CAMPBELL, *Collector.*

JOHN DUNN, *Comptroller.*

The Rt. Hon. CHARLES R. VAUGHAN, &c.

WASHINGTON, *February 20, 1828.*

The undersigned, his Britannic Majesty's envoy extraordinary and minister plenipotentiary, has the honor to lay before the Secretary of State of the United States a copy of a petition which he has received from Mr. Henry Beamish, of St. Andrew's, in the Province of New Brunswick. It appears that Mr. Beamish, having purchased flour in the United States, to be delivered at Eastport, in Maine, caused certain portions of it to be conveyed to St. Andrew's, in New Brunswick, from the latter port, in open boats. One boat, laden with forty-four barrels of flour, of the value of two hundred and twenty dollars, went adrift in the bay of Passamaquoddy, and afterwards got into Lubec, where the boat and cargo were seized by the officer of the customs. The petitioner disclaims any intention of infringing the laws of the United States. The boat, though British built, was not registered, as it is conceived by the British merchants of St. Andrew's that such boats have no national character. The undersigned has the honor to enclose a copy of a memorial signed by the collector and comptroller of customs at St. Andrew's, and of a memorial signed by the merchants and shipowners of that port, recommending the petition of Mr. Beamish; and likewise a copy of the deposition of the owner of the boat which had been seized.

The case of Mr. Beamish has been recommended so earnestly to the attention of the undersigned, that he cannot refuse to lay it before Mr. Clay; confidently relying upon its meeting with that attention which it may be found, upon investigation, to deserve.

The undersigned has the honor to request that Mr. Clay will accept the assurances of his highest consideration.

CHARLES R. VAUGHAN.

The Hon. HENRY CLAY, &c.

DEPARTMENT OF STATE,

Washington, February 29, 1828.

The Secretary of State presents his compliments to the Secretary of the Treasury, and has the honor to transmit to him the copy, enclosed, of a note from Mr. Vaughan to this office, with copies of the papers received with that note, being the petition of Henry Beamish, of St. Andrew's, in

the province of New Brunswick, two memorials, and an affidavit, on the subject of the seizure of forty-four barrels of flour, and the open boat in which they were brought to that port, by the collector of the customs at Lubec, in the State of Maine, for a violation of the laws of the United States; all intention of which the petitioner disclaims.

The object of troubling the Secretary of the Treasury with this communication is to procure, through his Department, the information required, to enable the Secretary of State to give a reply to Mr. Vaughan, as well as to put it in the power of the Secretary of the Treasury to afford any relief to the petitioner which may be within the competency of his Department, and to which he shall appear to be entitled.

TREASURY DEPARTMENT, *March 3, 1828.*

The Secretary of the Treasury presents his compliments to the Secretary of State, and has the honor to acknowledge the receipt of his note dated yesterday, and of the papers accompanying it.

The case presented appears to be that of a forfeiture incurred under the first section of the act of Congress of the 15th of May, 1820, entitled "An act supplementary to an act concerning navigation;" the fourth section of which act provides for the remission of all forfeitures incurred under said act.

In order, however, that the case may be brought properly before the Department for consideration, it will be necessary for the parties to prefer a petition in the manner prescribed by the act of Congress of March 3d, 1797, authorizing the Secretary to remit fines, forfeitures, &c.; which requires that a petition shall be presented to the judge of the district in which the forfeiture accrued, and that the said judge, after giving reasonable notice to the district attorney, and persons claiming the forfeitures, shall inquire, in a summary manner, into the circumstances of the case, and cause the facts to be stated and annexed to the petition, and transmitted to the Secretary of the Treasury of the United States, who shall thereupon have power to remit the forfeiture, if, in his opinion, it shall have been incurred without wilful negligence or an intention of fraud.

I am, very respectfully, &c.

The SECRETARY OF STATE.

